

DRAFT LBDC

A BUDGET BILL submitted by the Governor  
in accordance with Article VII of the Constitution

AN ACT to amend the labor law, in relation to limiting liquidated  
damages in certain frequency of pay violations (Part );

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 PART \_\_\_\_

2 Section 1. Subdivision 1-a of section 198 of the labor law, as amended  
3 by chapter 362 of the laws of 2015, is amended to read as follows:

4 1-a. On behalf of any employee paid less than the wage to which he or  
5 she is entitled under the provisions of this article, the commissioner  
6 may bring any legal action necessary, including administrative action,  
7 to collect such claim and as part of such legal action, in addition to  
8 any other remedies and penalties otherwise available under this article,  
9 the commissioner shall assess against the employer the full amount of  
10 any such underpayment, and an additional amount as liquidated damages,  
11 unless the employer proves a good faith basis for believing that its  
12 underpayment of wages was in compliance with the law. Liquidated damages  
13 shall be calculated by the commissioner as no more than one hundred  
14 percent of the total amount of wages found to be due, except such liqui-  
15 dated damages may be up to three hundred percent of the total amount of  
16 the wages found to be due for a willful violation of section one hundred  
17 ninety-four of this article. In any action instituted in the courts upon  
18 a wage claim by an employee or the commissioner in which the employee  
19 prevails, the court shall allow such employee to recover the full amount

1 of any underpayment, all reasonable attorney's fees, prejudgment inter-  
2 est as required under the civil practice law and rules, and, unless the  
3 employer proves a good faith basis to believe that its underpayment of  
4 wages was in compliance with the law, an additional amount as liquidated  
5 damages equal to one hundred percent of the total amount of the wages  
6 found to be due, except such liquidated damages may be up to three  
7 hundred percent of the total amount of the wages found to be due for a  
8 willful violation of section one hundred ninety-four of this article.  
9 Notwithstanding the provisions of this subdivision, liquidated damages  
10 shall not be applicable to violations of paragraph a of subdivision one  
11 of section one hundred ninety-one of this article where the ~~employee was~~  
12 ~~employer~~  
13 paid in accordance with the agreed terms of employment, the employee  
14 ~~their wages on a regular payday, but not less~~  
15 frequently than semi-monthly, but instead such violations shall be subject  
16 to damages of no more than one hundred percent of the lost interest found to  
17 be due for the delayed payment of wages calculated using a daily interest rate  
18 for each day payment is late based on the annual rate of interest then in  
19 effect, as prescribed by the superintendent of financial services pursuant  
20 to section fourteen-a of the banking law. Provided however, an employer who was  
21 previously found to be in violation of paragraph a of subdivision one of  
22 section one hundred ninety-one of this article shall be subject to damages of  
23 three hundred percent of the lost interest found to be due for the delayed  
24 payment of wages calculated using a daily interest rate for each day payment  
25 is late based on the annual rate of interest then in effect, as prescribed by  
26 the superintendent of financial services pursuant to section fourteen-a of the  
27 banking law.  
28 § 2. This act shall take effect on the sixtieth day after it shall  
29 have become a law immediately and shall apply to caues of action pending  
30 or commenced on or after the effective date.